

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 20 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SB SUTARIA

Versus

BANK OF BARODA

Appearance:

MR SHALIN MEHTA for M/S NJ MEHTA ASSO. for Petitioner
MR RC JANI for respondents.

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. I have heard Mr. Shalin Mehta learned counsel for the petitioner and learned counsel appearing for respondent-bank. The learned counsel for the petitioner submits that in the earlier case the consent order was passed by this High Court on 6th September, 1985 in Special Civil Application No. 1940 of 1985 and the

relevant part of the order reads as under :

"Petitioner has agreed not to make claim for salary for the period between March 2, 1985, the date of the order of removal and the date of final order that may be made hereafter, but in case he is exonerated or is reinstated by the disciplinary authority, appellate authority or by court or any competent authority, he shall be paid the same. It is clarified that at present the petitioner is not claiming actual reinstatement".

2. After the order of the High Court the bank has terminated the services of the petitioner on the basis of disciplinary proceedings drawn against him. However, on appeal the punishments were modified and the Appellate Authority punished the petitioner to the extent that three increments of pay will be withheld with cumulative effect. The Appellate Authority has also passed certain orders regarding payment of wages for the period from 2.3.1985 i.e. the date of termination of service of the petitioner to 10.2.1986 i.e. the date of reinstatement on the basis of the order of the Appellate Authority. The petitioner has challenged the order of the Appellate Authority regarding nonpayment of his wages for the period from 2.3.1985 to 10.2.1986. It is submitted by the learned counsel for the petitioner that in pursuance to the consent order passed by the High Court, when the petitioner has been reinstated in service the respondent bank is under obligation to pay the salary to the petitioner for the period from 2.3.1985 to 10.2.1986. It is also submitted by the learned counsel for the petitioner that the order of the High Court is very clear and it cannot create any confusion to the respondent bank or to the Appellate Authority. Subsequently, learned counsel for the petitioner submits that the petitioner is entitled to get the salary as per the consent order of the High Court. Learned counsel appearing on behalf of the respondent bank submits that the Appellate Authority has passed a complete order and if the petitioner is to accept or reject the order he is to do as a whole. Since the petitioner has been reinstated as per the order of the Appellate Authority, he cannot claim for backwages from the period 2.3.1985 to 10.2.1986 because the Appellate Authority has made it clear that he will not get his salary for the aforesaid period. It is also submitted by the learned counsel for the respondent bank that the petitioner was kept on probation and, therefore reinstatement order would be treated as fresh appointment for all purpose. Learned counsel for the respondent bank

further submitted that the probation can only be made in case of initial appointment or first appointment. Since the petitioner has been reinstated, there cannot be any question of probation. However, the question of probation may not arise in case of reinstatement of an employee. During the course of arguments, the learned counsel for the parties agreed upon that since the order of Appellate Authority is not in conformity with the consent order passed by this High Court on 6th September, 1985 in Special Civil Application No. 1940 of 1985, the Appellate Authority may review its order on the basis of an application made by the petitioner and the Appellate Authority will pass an appropriate order having regard to consent order passed by the High Court on 6th September, 1985. I am also of the view that the petitioner should move the Appellate Authority respondent bank by an application to review the order passed by the Appellate Authority and on the receipt of such application from the petitioner, the Appellate Authority shall consider and pass appropriate order having regard to the consent order of this Hon'ble High Court on 6th September, 1985 in Special Civil Application No. 1940 of 1985. The petitioner is directed to file the application to the Appellate Authority of the respondent - bank within 30 days from today and the Appellate Authority of the respondent bank shall consider and dispose of the application of the petitioner within 45 days from today on receipt of the of the application from the petitioner. With the aforesaid observation and direction this petition is disposed of.

(P.K.Sarkar, J)

(Vipul)